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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,680	09/22/2003	Karen Hogan	22660-RA	9390
30184	7590	07/16/2007		
MYERS & KAPLAN INTELLECTUAL PROPERTY LAW, L.L.C. CUMBERLAND CENTER II 3100 CUMBERLAND BLVD, SUITE 1400 ATLANTA, GA 30339			EXAMINER PRICE, RICHARD THOMAS JR	
			ART UNIT 3643	PAPER NUMBER
			MAIL DATE 07/16/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/667,680

**Applicant(s)**

HOGAN, KAREN

**Examiner**

Thomas Price

**Art Unit**

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

### DETAILED ACTION

Claims 1-29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claim language "protuberances are sufficiently rigid to at least one of deform and penetrate an external surface of the meat or other selected food item".

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by **Taunton (US Patent 2,778,173)**. Taunton teaches a method and apparatus of producing airtight packages. The device of Taunton includes a plurality of projections which broadly read on a mechanical tenderizing surface disposed therewithin the package. Taunton teaches edges 4 and 5 sealed along edges 6 and 7 in any suitable way to form a bag or pouch. Regarding claims 2 and 3, the bag of Taunton is non-porous plastic and is reversible. As for claims

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9-11, the tenderizing surface of Taunton is integrally formed with said bag and includes pyramidal-shaped teeth disposed on at least one inner surface of said bag.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5, 7, 8, 19, 21, 22, 23 and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Taunton (US Patent 2,778,178) in view of Logan, Jr. 6,212,716**).

Taunton does not specifically discuss the type of closure means for the bag or pouch. Logan teaches a Zip-loc bag and closure for releasably sealing a bag. Regarding the claims, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide the closure means of Taunton with a conventional Zip-loc closure means, in view of the teachings of Logan, Jr. in order to releasably close the bag. Further, a Zip-loc closure is believed to be a hermetically sealed closure. Regarding claim 28, it is well known in the art to one of ordinary skill in the art at the time the invention was made to use one's hand to hit a food item for purpose of tenderizing the food item.

Claim 14, 15-18, 20, 21, 24-26 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Taunton (US Patent 2,778,178)**. Taunton teaches a method and

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apparatus of producing airtight packages. The device of Taunton includes a plurality of projections which broadly read on a mechanical tenderizing surface disposed therewithin the package. Taunton teaches edges 4 and 5 sealed along edges 6 and 7 in any suitable way to form a bag or pouch. Regarding claims 2 and 3, the bag of Taunton is non-porous plastic and is reversible. As for claims 9-11, the tenderizing surface of Taunton is integrally formed with said bag and includes pyramidal-shaped teeth disposed on at least one inner surface of said bag.

Taunton does not discuss the use of a drain spout attached to the bag. However, in regards to claims 14 and 24, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide the bag of Taunton with a drainage spout, in that, it allows a user to remove unwanted liquids from the interior of the bag without opening the bag completely. In regards to claim 15, it is notoriously well-known in the art to place food items in a marinade bag and to tenderize the food items by hitting the bag to one of ordinary skill in the art at the time the invention was made.

### ***Response to Arguments***

The Applicant argues that "Taunton fails to teach at least a plurality of protuberance, as claimed" is noted. The independent claims merely claim a plurality of protuberances and no structural details of said protuberances are set forth or claimed. The reference to Taunton clearly shows a plurality of protuberances, whose shape(s) are similar to the shapes as disclosed by Applicant. Further, it should be noted, the protuberances as claimed by the Applicant do not inherently tenderize meat, but need a

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person or object to strike them in order to be compressed into the food item. The Applicant further argues that the reference to Taunton "fails to teach any structure capable of tenderizing meat or other selected food item". However, the Applicant also does not provide any discussion as to how the protuberances tenderize meat other than when they are struck, they will tenderize the food item. The additionally argues that the reference to Taunton "fails to teach any methodology of tenderizing same". In response to applicant's argument, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The Applicant provides additional functional use scenarios in which the device of Taunton purported will not work. However, these examples are specific in nature, wherein the Applicant's claims are broad in nature, and given the similarities of the claimed device with the patented device, one could say given the reasoning presented, that the Applicant's device does not or could not work either.

### ***Response to Amendment***

Applicant's arguments filed 04-19-2007 have been fully considered but they are not persuasive.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

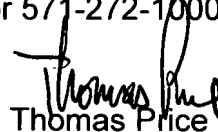
***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Price whose telephone number is 571-272-6892. The examiner can normally be reached on M-F from 6:30a.m. to 3:00p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Thomas Price  
Primary Examiner GAU: 3643  
October 29, 2006

rtp